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No. 78-642

In the Supreme Court of the United States

OCTOBER TERM, 1978

RICHARD L. THORNBURGH,
GOVERNOR OF PENNSYLVANIA, ET AL.,
APPELLANTS

v.

ROBERT E. CASEY, STATE TREASURER, and
THE GENERAL ASSEMBLY OF THE
COMMONWEALTH OF PENNSYLVANIA

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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This brief is filed in response to the Court's invitation of December 11, 1978.

QUESTION PRESENTED

Whether the executive branch of the government of Pennsylvania may obtain a declaratory judgment that a state statute requiring a specific state appro-

priation as a condition of the disbursement of federal funds on deposit in the State Treasury conflicts with federal law and thus is invalid under the Supremacy Clause.

STATMENT

1. From 1961 until 1975 the General Assembly of the Commonwealth of Pennsylvania included in its annual appropriations acts both a provision requiring monies received from the federal government for federally funded programs to be paid into the State Treasury and a blanket provision appropriating those monies out of the State Treasury for the purposes for which they had been received by the State (J.S. App. 7a-8a). On June 29, 1976, the General Assembly enacted Act No. 117, which significantly altered the legislature's approach to the control of federal grant funds.[1] That Act prohibited the State Treasurer from releasing any federal funds paid into the State Treasury "unless such funds have been specifically appropriated by an act of the General Assembly." 1976 Pa. Laws 469, § 3. The General Assembly made the first such specific appropriations for federally funded programs in the Federal Augmentation Appropriations Act of 1976, Act No. 17-A, 1976 Pa. Laws 1383, which was signed by the Governor on July 1, 1976.

2. Pennsylvania established a Special Prosecutors' Office under a grant from the Law Enforcement Assistance Administration (LEAA) pursuant to Title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701 *et seq.* That statute provides that states may apply for federal grants for the improvement of state law enforcement and criminal justice. A state that desires to participate in the LEAA program must submit a comprehensive state plan developed by a state planning agency subject to the jurisdiction of the governor (42 U.S.C. 3723, 3732).[2] The LEAA must review the plan submitted by the state planning agency to assure that it meets the statutory requirements (42 U.S.C. 3733). These requirements are in general designed to assure that the state plan represents a comprehensive evaluation of the state's needs for improvements in its law enforcement and criminal justice capabilities, that the state will assume both a specified share of current funding of the proposed projects and eventual responsibility for improvements originally funded by the LEAA grant, and that the planning agency is adequately equipped to administer grants made under the program.

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[1] The statute was enacted over the Governor's veto (R. 15a). ("R." refers to the Record in the Supreme Court of Pennsylvania.)

[2] The nature of Pennsylvania's comprehensive plan is summarized in an affidavit submitted by the Director of Finance of the Pennsylvania planning agency (R. 402a):

> This plan consists of, among other things, a review of the structure and resources of the entire criminal justice system in Pennsylvania, an analysis of the Commonwealth's crime and juvenile delinquency problems, an assessment of the needs of the system, and a statement of programs and priorities believed appropriate to deal with those problems and needs.

After the LEAA approves a state plan, the state is entitled to its proportional share of the funds appropriated by the Congress for LEAA grants for that fiscal year (42 U.S.C. 3736(a)). Those funds may be disbursed by the state planning agency for specific projects consistent with the approved state plan for that year (42 U.S.C. 3734).

After the state plan has been approved, the Administrator of LEAA certifies that a specified amount of federal funds has been committed to implement the plan, and that the state planning agency may withdraw these funds from the United States Treasury. The state planning agency then can submit to the Treasury a request for funds to cover disbursements under the plan, and a federal check will be sent to the state treasury for deposit in a restricted receipts account. When a project approved by the state planning agency requires funds available to it under the state plan, the planning agency requests the release of the appropriate amount from the state treasury (R. 400a-401a).[3]

By mid-1976, when the state statute at issue here became effective, the LEAA had approved a comprehensive Pennsylvania state plan that included a provision for an Office of Special Prosecutor; a subgrant contemplating that that Office would be funded entirely by LEAA monies had been approved by the Governor's Justice Commission, the Pennsylvania

[3] In Pennsylvania the request is made through the Comptroller of the Pennsylvania Department of Justice (R. 401a).

state planning agency (R. 35a; 407a-435a).[4] In accordance with the normal funding procedures outlined above, a requisition for federal funds needed to pay employees of the Special Prosecutor's Office for the week beginning July 1, 1976, was submitted to the State Treasurer. Because the release of those funds was forbidden by Act No. 117 in the absence of any specific authorizing appropriation, and because no state statute had appropriated any funds for the Special Prosecutor's Office (R. 85a-152a), the State Treasurer refused to issue a warrant for payment (R. 169a).

3. Appellants immediately filed a petition for review in the Commonwealth Court of Pennsylvania, naming the State Treasurer as respondent and alleging that Act No. 117 and the Federal Augmentation Appropriation Act of 1976 violated the Pennsylvania Constitution (R. 11a, 24a); that those acts and the Treasurer's refusal to honor requisitions for non-appropriated federal funds[5] violated the Supremacy

[4] The Office of Special Prosecutor was established pursuant to an LEAA grant in the spring of 1974 to investigate police corruption in Philadelphia (R. 603a-609a). The grant contemplated that, after completion of the Philadelphia investigation, the Office would investigate corruption throughout the Pennsylvania criminal justice system (R. 610a). By mid-1976 certain state legislators were under investigation by the Office (R. 233a-234a).

[5] Although the petition stated that the Treasurer had indicated that she would refuse to honor requisitions in the absence of state appropriations (R. 18a), the only actual refusal cited was the rejection of the requisition for the Special Prosecutor's Office (R. 22a). The record discloses no other refusal.

Clause of the federal Constitution and Title I of the Omnibus Crime Control Act (R. 25a); and that the Acts involved violated the Contracts Clauses of both federal and state Constitutions (R. 26a). The petition sought, *inter alia*, a declaratory judgment that the two state statutes are invalid, an order directing the Treasurer "to honor the requisitions presented by all proper state officials or agencies for Federal funds appropriated and allocated to them pursuant to Acts of Congress," and an injunction directing her to honor requisitions for funds for the Special Prosecutor's Office (R. 28a).[6] The General Assembly of Pennsylvania intervened as a party defendant (R. 204a, 223a, 638a) and has since assumed the major responsibility for the defense of this case.

All parties filed motions for summary judgment, supported by affidavits explaining the factual background of the case (R. 303a-632a). On December 3,

[6] Appellants also sought a preliminary injunction prohibiting the Treasurer from refusing to honor requisitions for the Special Prosecutor's Office (R. 179a-183a). The Commonwealth Court granted the motion, but only to the extent of requiring the Treasurer to honor requisitions for the Special Prosecutor's Office "to an amount not exceeding $176,843.00, being the balance of Federal LEAA funds granted for the operation of said office in the fiscal year July 1, 1975 to June 30, 1976, and remaining unexpended" (R. 219a-220a). The Treasurer complied with the preliminary injunction, the $176,843.00 has been expended by the Special Prosecutor's Office, and that expenditure is not challenged here. Since no more funds were released for maintaining the Special Prosecutor's Office, it went out of existence some months later. J.S. Supp. App. 52a (dissenting opinion); R. 443a-446a.

1976, the Commonwealth Court granted the Treasurer's and the General Assembly's motions for summary judgment (367 A. 2d 791; R. 639a-656a), characterizing the case as a "struggle of constitutional proportion between the executive and legislative branches of our State government over fiscal control of Federal funds allocated or allocable to Pennsylvania under sundry Federal aid programs authorized by Acts of Congress and administered by various Federal agencies" (367 A.2d at 793; R. 640a). The Commonwealth Court found that the state statutes in question did not violate the Pennsylvania Constitution; it also rejected the Governor's federal constitutional claims. Focusing on the alleged conflict between the state statutes and Title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701 *et seq.*, the court discerned no federal intent to supersede state appropriation powers (367 A.2d at 799; R. 653a):

> The voluntary nature of participation in the Federal funding program administered by the Law Enforcement Assistance Administration, and particularly Section 301(c) of the Act, 42 U.S.C.A. § 3731(c), providing for State matching funds, lead us to conclude that Act Nos. 117-1976 and 17-A-1976 present no Supremacy Clause violation.

The Supreme Court of Pennsylvania affirmed, with two justices dissenting (J.A. App. 5a-40a; J.S. Supp. App. 47a-56a). Although noting that the controversy arose from the Treasurer's refusal to disburse monies

allocated to the Special Prosecutor's Office (J.S. App. 12a), the court did not discuss the relation between the state law and Title I. Instead, it concluded (J.S. App. 23a):

> We do not find the clear and direct conflict necessary to invalidate a state law under the Supremacy Clause, and must therefore reject appellants' second contention. The federal legislation in question encourages state control of these programs [*i.e.* programs relating to education, law enforcement and public welfare]. As long as the funds are not diverted from their intended purposes and the terms and conditions proscribed [*sic*] by the Congress are not violated, there is no inconsistency between the provisions of the federal programs and state legislative administration of the funds. The federal government has expressly given the states a wide discretion in dealing with these funds. That discretion is most logically exercised by the branch of state government which is constitutionally empowered to exercise control over *all* expenditures.

The dissenting opinion reviewed the provisions of Title I and concluded that "Congress intended to give sole control of LEAA funds to the executive branch of state government" (J.S. Supp. App. 48a). Accordingly, the dissenting justices would not have permitted the state statute involved to serve as the basis for withholding federal funds allocated to the Special Prosecutor's Office (J.S. Supp. App. 50a-51a).

DISCUSSION

I. THIS COURT'S JURISDICTION

A. Justiciability

The question litigated below and presented to this court (J.S. 8) is broad. Appellants essentially argue that every possible application of the state statutes is invalid; the parties have disputed the issue in terms of the legislature's power to assert the right to reappropriate any or all federal funds allocated to the states, and the opinions of the Pennsylvania courts accordingly have been put in equally broad terms: they have held that neither the Pennsylvania nor the federal Constitution denies the legislature fiscal control over federal funds (J.S. App. 23a; 367 A. 2d at 798-799).

The question as thus presented is not justiciable in this Court. Abstract questions of the allocation of power within a state, or between states and the United States, are political questions. *Massachusetts* v. *Mellon*, 262 U.S. 447, 482-483 (1923).[7] So long as the question turns on the bare enactment, rather than on rights of persons or property affected by the enactment, no justiciable controversy is presented. As this Court emphasized in *Massachusetts* v. *Mellon*, *supra*,

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[7] *Massachusetts* v. *Mellon* involved a state objection to a federal statute granting funds to states for specified purposes, on the ground that the statute infringed on areas of exclusive state concern and induced the State to yield its sovereign right in violation of the Tenth Amendment. The Court held that such a claim presented no justiciable issue.

262 U.S. at 484 (quoting Mr. Justice Thompson's dissent in *Cherokee Nation* v. *Georgia*, 30 U.S. (5 Pet.) 1, 75 (1831)):[8]

> It is only where the rights of persons or property are involved, and when such rights can be presented under some judicial form of proceedings, that courts of justice can interpose relief. This court can have no right to pronounce an abstract opinion upon the constitutionality of a state law. Such law must be brought into actual or threatened operation, upon rights properly falling under judicial cognizance, or a remedy is not to be had here.

If the abstract question presented by appellants could be answered at all, the answer would be that "the State of Pennsylvania may * * * pattern its government after the scheme set forth in the Federal Constitution or in any other way it sees fit. The Constitution does not impose on the States any particular plan for the distribution of governmental powers." *Mayor* v. *Educational Equality League*, 415 U.S. 605, 615 n.13 (1974). Although it may be that Congress could alter the structure of state governments in some respects, whether it has done so in any particular respect would depend on the statute authorizing the grant involved. To resolve

[8] Although finding it unnecessary to reach the question of the constitutionality of the state statute at issue in *Cherokee Nation*, Mr. Chief Justice Marshall stated (30 U.S. (5 Pet.) at 20) that the relief requested against the state legislature "savors too much of the exercise of political power, to be within the proper province of the judicial department."

the issue presented at J.S. 8 in this fashion would require this Court to determine the congressional intent in enacting scores of different statutes authorizing federal grants to states and their subdivisions —an intent that frequently can be discerned only from a detailed analysis of the legislative history of the particular statute involved. See, *e.g.*, *Wheeler v. Barrera*, 417 U.S. 402 (1974); *King* v. *Smith*, 392 U.S. 309 (1968).[9] To essay such an answer would be to give an advisory opinion of sweeping proportions.

Appellants refer briefly to three federal statutes to "illustrate the exclusive role that Congress has established for the executive branch of state government" (J.S. 14), while appellees refer to other federal statutes as demonstrating that Congress intended, in "federal augmentation legislation," to permit "state programs to be administered in accordance with state law" (Motion to Dismiss or Affirm

[9] There is no simple way of avoiding this analysis. Appellees suggest (Motion to Dismiss or Affirm 3 n.1, 9 n.6) that federal grant statutes can be broadly catagorized as either augmentation grants or categorical assistance, and that the application of the Pennsylvania statute to federal augmentation grants does not conflict with congressional intent. If the suggestion is simply that the controlling question is the *form* of the grant (*i.e.*, block grants, as in Title I, the size of which is determined by the state's population, versus grants, such as those for needy dependent children contained in 42 U.S.C. 601 *et seq.*, in which the grant size depends on the state's expenditures for the assisted project), the analysis is oversimplified. If the suggestion is that other factors also may be considered in categorizing particular legislative grants, appellees' distinction represents simply a way of identifying a conclusion, rather than an aid to analysis.

6).[10] Both arguments may be correct; the Pennsylvania statute may be consistent with some federal grant statutes and inconsistent with others. This Court should be reluctant to undertake the effort of identifying the particular legislative intent of every federal statute under which Pennsylvania receives federal assistance, particularly in the absence of evidence that the Treasurer has refused to release funds for programs funded by any grant other than that administered by the LEAA, and of any detailed analysis of the various federal statutes by the courts below.[11]

B. Preservation of the Federal Question

The State Treasurer refused to release funds for the Special Prosecutor's Office, relying on the state statutes at issue, and the state executive branch claims entitlement to those funds despite the state statute, relying on Title I of the Omnibus Crime Control and Safe Streets Act of 1968. The question

[10] Not surprisingly, both parties cite Title I of the Omnibus Crime Control and Safe Streets Act of 1968 as supporting their view of congressional intent, since that is the statute around which the dispute actually centers.

[11] To the extent that appellants question the political wisdom of the state appropriation acts (see J.S. 14-16), they raise issues of a kind that this Court recently refused to consider in *Holt Civic Club* v. *City of Tuscaloosa*, No. 77-515 (Nov. 28, 1978), slip op. 13-14: "From a political science standpoint, appellants' suggestions may be sound, but this Court does not sit to determine whether [the state] has chosen the soundest or most practical form of internal government possible." Cf. *Carmichael* v. *Southern Coal Co.*, 301 U.S. 495, 526 (1937).

whether the Supremacy Clause is violated by the application of the state appropriation acts to funds granted to the state under that specific federal statute presents a concrete justiciable controversy. But this Court cannot resolve that controversy unless it was adequately presented to the state courts.

The question presented in the Jurisdictional Statement, although phrased as a general challenge to the state statutes, comprehends a challenge to the particular application of the statute out of which this case arose. The specific question is thus adequately presented in this Court (Rule 15(c) of the Rules of this Court). Although the matter is not entirely free from doubt, we believe that the appellants also preserved the narrow question in the state courts. The petition for review recited the State Treasurer's refusal to release funds for the Special Prosecutor's Office and asserted that the enactment of the state statutes and the Treasurer's actions in reliance on them "violate the Supremacy Clause of Article VI of the United States Constitution, Title I of the Omnibus Crime Control and Safe Streets Act of 1968" and numerous other statutes (R. 22a-23a, 25a). The relief requested included not only a judgment declaring the state appropriation acts invalid (R. 27a) but also a permanent injunction ordering the Treasurer to honor requisitions presented on behalf of the Special Prosecutor's Office for funds allocated to it under the LEAA grant (R. 28a). In both the Commonwealth Court and the Supreme Court of Pennsylvania, appellants cited the LEAA grant

program as an example of federal grants to Pennsylvania and asserted specifically that the state appropriation acts were inconsistent with Title I (appellants' Brief in Pennsylvania Supreme Court at 57).

C. Mootness

The Special Prosecutor's Office is no longer in existence (see note 6, *supra*), and the parties have informed us that the funds originally allocated in the 1976 state plan for the support of that Office have been reallocated. There is, therefore, some question whether a continuing controversy requires resolution by this Court. See *Steffel* v. *Thompson*, 415 U.S. 452, 458-460 (1974); *Ellis* v. *Dyson*, 421 U.S. 426 (1975). The petition for review sought both declaratory relief and an injunction requiring the Treasurer to release funds for the Special Prosecutor's Office. Subsequent events have clearly mooted the request for permanent injunctive relief; it does not follow, however, that the request for declaratory relief is likewise moot. See *Super Tire Engineering Co.* v. *McCorkle*, 416 U.S. 115, 123 (1974); cf. *Zwickler* v. *Koota*, 389 U.S. 241 (1967).

This Court can consider the request for declaratory relief so long as there remains "a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Maryland Casualty Co.* v. *Pacific Co.*, 312 U.S. 270, 273 (1941). There is such a substantial controversy here. Although appellants no longer seek the release of funds to pay the

1976 expenses of the Special Prosecutor's Office, at least some of them—the Governor, the Attorney General, and the Governor's Justice Commission—have an immediate and real interest in establishing the inconsistency of the state appropriation statutes with Title I. The General Counsel of the LEAA has determined that the state statutes are inconsistent with the federal Act and has informed the Attorney General of Pennsylvania that "if Pennsylvania does not comply with [the approved state plan], LEAA will initiate appropriate action under the Act. Such action could include a termination of payment of LEAA funds to Pennsylvania" (R. 393a-394a).[12] Thus, there is a substantial likelihood that the approval of future Pennslyvania state plans would be affected by the declaratory judgment that appellants seek. Here, as in *Super Tire Engineering Co.* v. *McCorkle*, *supra*, 416 U.S. at 122, "the challenged governmental activity * * * by its continuing and brooding presence, casts what may well be a substantial adverse effect on the interests of the [appealing] parties."

II. THE MERITS

Congress has not required any state to participate in the LEAA program, and state legislatures unquestionably have substantial roles to play in the scheme established by Title I. Appellants concede (J.S. 13) that a state legislature properly may de-

[12] It also could include recoupment of funds received and expended while the State was not complying with the conditions of the grant statute.

termine whether the state participates in the LEAA grant program at all and properly may require the exclusion of specific projects from a proposed state plan. The legislature may prevent state participation in the federal program by refusing to enact a statute authorizing the establishment of a state planning agency [13] or by refusing to appropriate the state matching funds required by 42 U.S.C. 3731(c). Because the LEAA will not approve a state plan that is inconsistent with state law, the legislature also can require the elimination from a proposed plan of a specific project by enacting a statute prohibiting the implementation of the project.[14]

But it is also clear from the language and legislative history of Title I, and particularly its amendment by the Crime Control Act of 1976 (Pub. L. No. 94-503, 94 Stat. 2407), that Congress intended the state planning agency, not the legislature, to have the primary role in developing the comprehensive state plan. In including in the 1976 Amendments a provision requiring the proposed state plan to be submitted to the state legislature at its request "for an advisory review" (Pub. L. No. 94-503, Section 206, 90 Stat. 2411, 42 U.S.C. 3726), Congress emphasized that the legislative role was to be advisory, rather than

[13] The Crime Control Act of 1976, Pub. L. No. 94-503, Section 105, 90 Stat. 2408, amended 42 U.S.C. 3723 to require that agencies not created or designated by state law "shall be so created or designated by no later than December 31, 1978."

[14] A legislature also could terminate a particular project by refusing to appropriate matching funds for *any* project in the comprehensive plan until the objectionable project had been removed from the plan.

binding on the state planning agency. S. Rep. No. 94-847, 94th Cong., 2d Sess. 16-17 (1976); H.R. Rep. No. 94-1155, 94th Cong., 2d Sess. 20 (1976).[15] This provision raises a strong argument that a legislature may not participate in the LEAA program by refusing, after a state plan has been approved by LEAA, to release federal funds that the state planning agency has allocated to a specific project in implementation of the approved state plan. Even though a legislature has a number of other ways (discussed above) to achieve its goals, this one avenue may be closed. For the reasons we now discuss, however, the Court need not decide whether Congress has prohibited legislative action of the sort involved here.

Nothing in Title I or its legislative history suggests any intent to require a state to accept federal funds. The statute is no more than a federal offer to "*assist* State and local governments in strengthening and improving law enforcement, * * * *encourage* States and units of local government to develop and adopt comprehensive plans * * *; *authorize* grants to States and units of local government * * * [and] *encourage* research and development directed toward the improvement of law enforcement * * *." 42 U.S.C. 3701 (emphasis added). The legislative his-

[15] Although the 1976 Amendments became effective several months after the enactment of the Pennsylvania statutes in issue here, the Senate and House Reports cited in the text demonstrate that Congress believed that the amendments would expand, rather than limit, the legislative participation in the planning process.

tory confirms that Title I is an offer of federal financial assistance to the states, which are entitled to receive money if they comply with the terms offered or to reject the offer if they prefer not to comply with the terms. S. Rep. No. 1097, 90th Cong., 2d Sess. (1968); H.R. Rep. No. 488, 90th Cong., 1st Sess. (1967). See also, *e.g.*, *Massachusetts* v. *Mellon*, *supra*; *Oklahoma* v. *Civil Service Commission*, 330 U.S. 127, 143-144 (1947); *Rosado* v. *Wyman*, 397 U.S. 397, 420-422 (1970); *Townsend* v. *Swank*, 404 U.S. 282, 291, 292 (1971) (Burger, C.J., concurring).

Because the federal legislation leaves the option of non-participation open to the state, and allows the legislature to exercise that option, it makes no difference whether appellants are correct in their contention that the state appropriation acts are inconsistent with Title I. If, as appellants maintain, Act No. 117 violates the conditions of eligibility for the federal grant, then Pennsylvania is not entitled to receive the federal funds whose availability is conditioned on compliance with the federal terms. The funds otherwise allocated to the state become available for reallocation (42 U.S.C. 3735). The executive branch of Pennsylvania cannot claim a right to receive federal money despite the legislative branch's refusal to abide by the conditions of eligibility. The whole State—including the executive branch—loses its eligibility when the legislative branch refuses to

cooperate.[16] And if appellants are incorrect in their interpretation of Title I, the result is the same, because then federal law provides no impediment to the legislative decision to withhold funds from the Special Prosecutor's Office. Thus, regardless of the merits of the claim concerning the legislative role contemplated by Congress, appellants can assert no right to federal funds in the face of the state legislation. Accordingly, appellants' request for a declaratory judgment was properly refused, because no declaration could have produced—or would in the future produce—the fiscal control appellants seek.[17]

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[16] This is not a case like *King* v. *Smith*, *supra*, or *Townsend* v. *Swank*, 404 U.S. 282 (1971), in which a private person claiming entitlement under federal law establishes that a state has accepted federal funds but nonetheless is expending them in ways prohibited by substantive federal rules. In such cases courts properly may insist that the state use the monies in the way Congress directed. But the Pennsylvania legislature did not attempt to expend the Special Prosecutor's Office funds in a way that is inconsistent with federal rules, and it did not attempt to define the beneficiaries of the federally funded program in a way inconsistent with the federal policies underlying the grant. The legislature simply decided that Pennsylvania would not operate a specific program for which federal funds were available. Consequently here, as in *PAAC* v. *Rizzo*, 502 F. 2d 306, 314-315 (3d Cir. 1974), cert. denied, 419 U.S. 1108 (1975), "an agency which fails to comport with the Act's guidelines is neither illegal nor in contravention of the Supremacy Clause. Rather, it is merely an agency that may be forced to forego federal funding." See also A. Willcox, *The Function and Nature of Grants*, 22 Ad. L. Rev. 125, 131-135 (1970).

[17] Many state legislatures are asserting the authority to review, through the appropriation process, federal grants to

CONCLUSION

The appeal should be dismissed for want of a substantial federal question.

Respectfully submitted.

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FEBRUARY 1979

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the state. See National Conference of State Legislatures, *State Legislative Control of Federal Funds* (1978); Advisory Commission on Intergovernmental Relations, *The States and Intergovernmental Aids* 79 (1977). If these efforts significantly affect the administration of federal grants, they may raise issues requiring resolution by this Court. Although we believe that it will rarely be appropriate for this Court to review a dispute, like this one, between two branches of the state government over whether the state wishes to receive a federal grant, the question of the consistency of a state reappropriation act with a federal grant statute properly could be raised by a state's challenge to a federal agency's refusal to make such a grant on the ground that the state act was inconsistent with the terms of the congressional offer of assistance.

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